

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK

3  
4 WILLIAM J. WAGNER,  
5 Plaintiff,

6 vs Docket No. 15-CV-633-JTC

7  
8 CHIARI & ILECKI, LLP,  
9 Defendant.

10  
11 Examination Before Trial of WILLIAM ILECKI, ESQ., held  
12 pursuant to the Federal Rules of Civil Procedure, in  
13 the law offices of CONNORS LLP, 1000 Liberty Building,  
14 424 Main Street, Buffalo, New York, on Wednesday,  
15 October 5, 2016 at 10:08 a.m. before Molly Fenske,  
16 Notary Public.

1 APPEARANCES:

2  
3 LAW OFFICES OF KENNETH HILLER, PLLC  
4 BY: SETH J. ANDREWS, ESQ.  
5 6000 North Bailey Avenue, Suite 1A  
6 Amherst, New York 14226  
7 sandrews@kennethhiller.com  
8 Appearing for the Plaintiff.

9  
10 CONNORS LLP  
11 BY: PAUL A. WOODARD, ESQ.  
12 1000 Liberty Building  
13 424 Main Street  
14 Buffalo, New York 14202  
15 paw@connorsllp.com  
16 Appearing for the Defendant.  
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1                   (Whereupon, the following stipulations  
2     were entered into by the respective parties:

3                   It is hereby stipulated by and between  
4     counsel for the respective parties that the oath of  
5     the referee is waived, that filing and certification  
6     of the transcript are waived, and all objections,  
7     except as to the form of the question, are reserved  
8     until the time of trial.)

9                   THE REPORTER: Mr. Andrews, you'll supply  
10    Mr. Woodard?

11                  MR. ANDREWS: Yes.

12                  THE REPORTER: Usual stipulations or read  
13    and sign?

14                  THE WITNESS: Usual stipulations are fine  
15    with me because it allows me the opportunity to review  
16    it.

17                  MR. WOODARD: Yeah, perfect.

18                  (A recess was taken.)

19                  THE REPORTER: Would you like sixty days?

20                  MR. WOODARD: That would be great. Is  
21    that okay?

22                  THE WITNESS: Yeah.

23                  WILLIAM ILECKI, ESQ., 371 Starin Avenue,  
24    Buffalo, New York 14216, having been duly called and  
25    sworn, was examined and testified as follows:

1                   MR. ANDREWS: Mr. Ilecki, my name is Seth  
2 Andrews. I'm the attorney for the plaintiff, William  
3 J. Wagner, in this matter. Mr. Wagner filed a lawsuit  
4 in the Western District of New York naming Chiari and  
5 Ilecki as a defendant alleging violations of the Fair  
6 Debt Collection Practices Act.

7                   You've been designated as the 30(b)(6)  
8 witness for today's deposition. I will be asking you  
9 questions in that capacity. You've also been noticed  
10 as a 30(b)(1) witness. I'll be sure to indicate if my  
11 question pertains to you. Otherwise, you should  
12 assume that it's the 30(b)(6) as you're testifying; is  
13 that understood?

14                  THE WITNESS: I understand, so you're  
15 telling me you will reference specifically if I'm to  
16 answer as an individual witness?

17                  MR. ANDREWS: Correct. Otherwise, assume  
18 the question is posed --

19                  THE WITNESS: I understand.

20                  MR. ANDREWS: Before we begin, I'm sure as  
21 an attorney you know this, but I just want to cover  
22 some ground rules.

23                  I'm going to ask you some questions. Do  
24 your best to provide me with responses.

25                  Please try to wait until I finish before

1 different -- I've had since -- since graduating from  
2 law school, I've had --

3 Q. Your firm, your current firm went through three  
4 different name transitions?

5 A. Okay. The firm was initially Horwitz and  
6 Frankel. The next -- and that's F-R-A-N-K-E-L, and  
7 Horwitz is H-O-R-W-I-T-Z; changed the name to Horwitz,  
8 Frankel and Ilecki; then Horwitz and Ilecki; and then  
9 we merged in 2006 to become Bulan, B as in Brian,  
10 U-L-A-N as in Nancy, Chiari, Horwitz and Ilecki; and  
11 then we shortened the name in 2010 to Chiari & Ilecki.

12 Q. Starting when it was first Horwitz to the  
13 present, Chiari & Ilecki, how long has your tenure  
14 been with the firm?

15 A. I believe twenty-six years, twenty-five, maybe  
16 a little less than twenty-five years or twenty-six --  
17 maybe a little less than twenty-six years, more than  
18 twenty-five years.

19 Q. And during that time, this is now a question  
20 for you as a (b)(1) witness, does your practice -- did  
21 your practice from beginning to end involve the  
22 collection of debts?

23 A. Yes.

24 Q. Does Chiari & Ilecki handle any other type of  
25 matters besides debt collection?

1 A. Yes.

2 Q. What other matters, generally speaking?

3 A. Landlord-tenant, some minor estate and real  
4 estate.

5 Q. The vast majority is debt collection though?

6 A. The majority is debt collection, yes.

7 Q. And approximately how many employees are there  
8 at Chiari & Ilecki?

9 A. Thirteen.

10 Q. How many attorneys are there at Chiari &  
11 Ilecki?

12 A. There are five attorneys in the firm. We have  
13 two attorneys that we have in an of counsel position.

14 Q. Do those two of counsel count for the thirteen?

15 A. No, they're not employees. They don't count as  
16 the five either.

17 Q. So eight non-attorney employees?

18 A. No, you asked how many attorneys. There are  
19 two partners, three attorneys.

20 Q. And then my next question is how many if -- you  
21 said thirteen; right? So eight non-attorney  
22 employees?

23 A. That would be ten. The partners aren't  
24 employees.

25 Q. You work for a living.

1           There are two paralegals that I have trained to  
2 skip trace. They do very little of it, but they have  
3 been starting to review our records for skip tracing  
4 purposes.

5           Q. Did either of those individuals have any skip  
6 tracing activity done on Mr. Wagner's file?

7           A. No.

8           Q. This is a document that was produced by the  
9 defendant in response to plaintiff's discovery  
10 demands. It's bates labeled Chiari 164, 165 and 166.  
11 Do you see that?

12          A. I see 164. I see 165 and I see 166, yes.

13          Q. Can you explain to me what this is?

14                 MR. WOODARD: Are we marking this or no?

15                 MR. ANDREWS: No, not yet.

16                 THE WITNESS: This document is a print-out  
17 of an Excel spreadsheet that details the -- we call  
18 them events, things that happen on a file that are  
19 noted on our Microsoft Access database program. It's  
20 a proprietary program, and this document relates to  
21 the events on the William J. Wagner, Junior file that  
22 we have where our client is MJ Peterson, LLC.

23                         (Whereupon, Exhibit Plaintiff's A, an  
24 events sheet, was marked for identification.)

25 BY MR. ANDREWS:



1 THE WITNESS: Actually, that is -- when  
2 you say predecessor, we just simply changed the name.

3 BY MR. ANDREWS:

4 Q. All right, so it's the same entity?

5 A. It's the same entity.

6 Q. This William J. Wagner file was received by the  
7 firm, and at that time, there wasn't any case  
8 management system in place?

9 MR. WOODARD: Object to form.

10 THE WITNESS: Yeah, I can -- there was no  
11 case management system, computerized case management  
12 system employed by Goldstein, Bulan and Chiari.  
13 Goldstein, Bulan and Chiari filed the lawsuit and took  
14 the judgment. So the judgment was in place by  
15 Goldstein, Bulan and Chiari, and they either submitted  
16 the judgment before the merger or actually obtained  
17 the judgment before the merger, so nothing would have  
18 been done by that 2006 merged firm. Nothing would  
19 have been done to obtain the judgment.

20 BY MR. ANDREWS:

21 Q. So my -- I guess what I'm trying to get at is  
22 this is the only record you have of activity done on  
23 the account. Anything prior, there was no -- there's  
24 no case management tracking of it; correct?

25 A. Okay. There are copies. There are copies of

1 documents, but there's no case management system,  
2 whether it be computerized or written, where an  
3 attorney would actually write notes of everything that  
4 happened.

5 Q. So when you previously testified that the  
6 address 378 Windermere Boulevard was determined to be  
7 the address through a Lexis search, is that from  
8 memory? Because there's no record of that as far as  
9 an activity log because there was no case management  
10 system at the time; correct?

11 A. Again, I'm going to object to the form myself  
12 because there's a lot in that question. Before a file  
13 is placed on our computer database, I review the file.  
14 I review the Lexis program. Today, it's a Westlaw  
15 program. We also have a Lexis program. We actually  
16 have both, but it's accurate today. There's no more  
17 SmartLinx, so I review those websites. That review is  
18 done before a file is placed on our computer system,  
19 so you will never see a notation before a file is open  
20 that a review is made. It's just done.

21 Q. And you know that because you're the only one  
22 that does it?

23 A. I'm not the only one that does it. My  
24 paralegal today is reviewing new files and then I  
25 review after her. I have had attorneys also review

1 files, attorneys I'm training for example. All new  
2 attorneys that start, I have them review Westlaw and  
3 Lexis. For the new attorneys, I then review what  
4 they've looked at. They will -- it's part of the  
5 training. So back in 2006, other than me, I don't  
6 know who else at that time would have also reviewed  
7 the file before the conversion.

8 Q. Okay. So is there a procedure in place then --  
9 after that initial Lexis search was done, is there a  
10 procedure in place to determine a proper address upon  
11 being notified that the address you thought was good  
12 based on your Lexis search, which turns out isn't, is  
13 there a procedure that would help you identify a good  
14 address?

15 A. Correct.

16 MR. WOODARD: I'm just going to object to  
17 I guess asking to some extent this line of questioning  
18 and asking him about procedures in place at a time  
19 that's not really relevant to the lawsuit. I'll give  
20 you some leeway, but I just do want to note the  
21 objection.

22 THE WITNESS: And I appreciate it. There  
23 have been procedures in place. To determine a correct  
24 address, you have to be notified of an incorrect  
25 address my entire practice, so that's a fact.

1           Now, I do want to say that we also run  
2     credit reports. I cannot tell here when we ran a  
3     credit report first because I don't remember when we  
4     started including the requests for a credit report in  
5     the events. The credit report used to be requested  
6     without an event being created. So in addition to a  
7     Lexis or Westlaw search, there is a review of credit  
8     reports done on every file at some point where we have  
9     a judgment just about, unless it's paid or a  
10    bankruptcy is filed.

11   BY MR. ANDREWS:

12       Q. If we go back to 164, and if we look at May 10,  
13    2011 for the event date? Are you with me?

14       A. Yep.

15       Q. And it looks like it says previous address,  
16    1571 Eggert Road, Wagner, William J.?

17       A. Okay.

18       Q. How did you determine if 1571 Eggert Road was a  
19    possible address?

20       A. Well, I again would not have been the one who  
21    would have reviewed this, but you can see prior to the  
22    May 10, 2011 events, you will see the attorneys who  
23    reviewed the file for actually over two years, over a  
24    two-year period. So I -- so they would have been the  
25    ones who determined a new address, and they would have

1 determined a new address reviewing credit reports and  
2 Lexis primarily. Of course, they could have also  
3 determined new address in this case from a PO. It  
4 looks like a PO box letter that may have gone out or a  
5 judgment letter may have gone out because you look at  
6 the event on April 7, 2011, letter, post office  
7 address request, that is a letter to the post office  
8 requesting a new address.

9 Q. And presumably then the post office provided  
10 1571 Eggert Road?

11 MR. WOODARD: Form.

12 THE WITNESS: Well, we have on April 14,  
13 2011, actually, I don't have -- other than the April  
14 14, 2011, you'll see the USPS PO box letter returned.  
15 It looks like no change of address that you would see  
16 on April 14, 2011.

17 BY MR. ANDREWS:

18 Q. So at this point, we're in 2011. The file was  
19 opened sometime prior to September of 2006; is that  
20 correct?

21 A. Again, the file would have been opened by  
22 Goldstein, Bulan and Chiari before September 2006.

23 Q. So we're five years in, and has there been any  
24 contact with the debtor at this point that you can see  
25 from this event log?

1       A. Well, there would have been contact with the  
2 debtor by the prior firm.

3       Q. How do you know that?

4       A. They served the debtor.

5       Q. Was he personally served?

6       A. I don't know how he was served, but he was  
7 served.

8       Q. Do you know if it was a default judgment  
9 entered?

10      A. I do not know, but I do not know off the top of  
11 my head, but it would be in the documentation.

12      Q. After entry of the judgment, do you know if  
13 there was any contact between September '06 and May of  
14 2011 with the debtor?

15      A. From September 2006?

16      Q. To May of 2011, which...

17      A. There was contact.

18      Q. What contact?

19      A. There was a letter sent to the debtor on  
20 January 13, 2007.

21      Q. For a contempt motion?

22      A. No.

23      Q. I apologize. I see, yep. That's the letter  
24 informing that Chiari & Ilecki is now handling the  
25 matter?

1       A. It is a letter informing the debtor of the new  
2       -- of the merged firm handling the matter, providing  
3       that letter also includes the CPLR 5222, notice of  
4       judgment debtor. It would have included a copy of the  
5       judgment as well.

6       Q. And that was sent certified, the debtor signed  
7       for that letter?

8       A. No.

9       Q. So you don't know whether he received the  
10      letter then?

11      A. Well, the letter was mailed to the debtor.

12      Q. I know, but what I'm trying to ask is you can  
13      mail a letter, but maybe that's not the correct  
14      address. Do you have any knowledge that he received  
15      that letter? It wasn't sent certified. He didn't  
16      sign for it; correct?

17      A. There is a presumption of mailing, so I have  
18      that knowledge.

19      Q. If that address happens to be the correct  
20      address?

21      A. What do you mean by correct address? I need to  
22      clarify that.

23      Q. Well, you can mail something and there's a  
24      presumption that whoever it's addressed to receives  
25      it, but if they're not living at that address, they

1 don't reside at that address, then they wouldn't  
2 receive it; correct?

3 MR. WOODARD: Form.

4 THE WITNESS: That's incorrect.

5 MR. ANDREWS: So you can mail something to  
6 someone -- your testimony today is you can mail some  
7 -- mail correspondence to an address, and regardless  
8 of that -- whether or not in reality the person  
9 resides at that address, they're deemed to have  
10 received that?

11 MR. WOODARD: Form.

12 THE WITNESS: That's a different question.

13 BY MR. ANDREWS:

14 Q. I want to know what proof you have that the  
15 debtor received that letter in January of 2007.

16 A. One of the methods of proof we have is the  
17 letter was mailed and not returned.

18 Q. What -- you said one of them, what other...

19 A. The presumption of mailing.

20 Q. Is it possible that the letter was sent to that  
21 address and someone else lived there and just simply  
22 threw it away?

23 A. If you're asking me a hypothetical, that is  
24 always a possibility in every single piece of mail  
25 that's ever mailed.



1 Q. What I'm -- just to clarify, the debtor never  
2 called into the office stating he received this letter  
3 in January of 2007; correct?

4 A. In January of 2007, we have -- we received no  
5 telephone calls from the judgment debtor.

6 Q. The debtor never sent any correspondence saying  
7 he received a letter on January 13, 2007, never sent  
8 you a letter back saying I got --

9 A. That is correct. In January 2007, there's no  
10 correspondence from the debtor.

11 Q. You never received any slip from the post  
12 office, again, saying that he signed for this letter,  
13 receipt of this letter?

14 A. We would not have received a slip from the post  
15 office.

16 Q. But you didn't send it certified; correct?

17 A. We did not send the letter certified.

18 Q. All right. So let's look again at May 10,  
19 2011, and you send a letter to 1571 Eggert Road, as  
20 well as an information subpoena to that address; is  
21 that correct?

22 A. No, that would not be correct.

23 Q. I see May 10, 2011, document, letter to debtor.  
24 What address? What address was that letter sent to?

25 A. I don't know from this computer print-out what

1 address that notice would have been sent to. I might  
2 be able to determine that address however, either  
3 looking at the document or seeing if there was another  
4 address. If I had to guess, I would say we sent the  
5 letter and the information subpoena to 102 Reiman  
6 Street.

7 Q. At one point though -- well, I'm showing you a  
8 document that's been produced in response to  
9 plaintiff's request for discovery to the defendant.  
10 It's labeled Chiari 132. It's an April 4, 2011 letter  
11 addressed to William J. Wagner, Junior at 1571 Eggert  
12 Road, Amherst, New York 14226. So any indication that  
13 the debtor received this letter other than the  
14 presumption of mailing?

15 A. There is no indication that the defendant  
16 received this letter. I mean, he didn't get the  
17 letter.

18 Q. Okay.

19 A. There's an indication he did not.

20 Q. And so then next you send this letter, May 10,  
21 2011; is that right? And that's the next letter that  
22 would have went?

23 A. Correct.

24 MR. WOODARD: Chiari 138.

25 BY MR. ANDREWS:

1 Q. Yeah, Chiari 138.

2 A. Correct, Chiari 138 is a letter sent to the  
3 judgment debtor on May 10, 2011.

4 Q. Any indication that he received this letter?

5 A. Yes.

6 Q. And how do you know that?

7 A. The letter was not returned by the post office  
8 and the presumption of mailing.

9 Q. Okay. Outside of those two, again, the William  
10 J. Wagner, Junior never called in; correct? After  
11 sending out this letter?

12 A. Well, I have to look at the rest of the events  
13 to see if he ever called in. If you're asking if he  
14 called in within a month of the letter, it does not  
15 appear that we had contact from the judgment debtor in  
16 response to this letter.

17 Q. Did he ever send any -- can you tell if he ever  
18 sent any correspondence in response to this letter?

19 A. Again, it appears that there was no  
20 correspondence from the defendant -- from the judgment  
21 debtor within a reasonable time after this letter.

22 Q. And was that information subpoena, was that  
23 returned?

24 A. Which information subpoena?

25 Q. The information subpoena sent to 102 Reiman

1 Street, floor two?

2 MR. WOODARD: What's the date on this?

3 THE WITNESS: Yeah, if you're -- there's  
4 an event where an information subpoena was sent on May  
5 10th or at least created on May 10, 2011.

6 BY MR. ANDREWS:

7 Q. Same date as this letter; correct? Chiari 138?

8 A. Correct, the two would have been created at the  
9 same time.

10 Q. And sent out together?

11 A. No, not in the same -- no, not sent out  
12 together. So just to, again, to speed things up, it  
13 appears that the information subpoena was returned to  
14 my office on June 8, 2011 by the USPS unclaimed.

15 Q. And then in response, you served a subpoena or  
16 attempted to serve a subpoena on the debtor?

17 A. Well, in response, it's not a response to the  
18 post --

19 Q. June 27, 2011, the letter to server to serve?

20 A. What we did after receiving the unclaimed  
21 envelope from the postal service, we issued a subpoena  
22 to take depositions, subpoena duces tecum, and --

23 Q. The debtor exam.

24 A. And we sent that subpoena duces tecum out to a  
25 process server by letter dated June 27, 2011.

1 Q. And did that process server indicate that  
2 service was successful?

3 A. On -- no.

4 Q. What did he indicate?

5 A. Well, I'm looking at an entry from July 10,  
6 2011 where the process server stated that the  
7 defendant moved from the address at 102 Reiman Street,  
8 floor two. Well, it doesn't say he moved from 102  
9 Reiman Street, floor two, but the address where we  
10 sent the subpoena to, the debtor had moved out.

11 Q. Just handed you a document that's bates Chiari  
12 156. Is that the affidavit that you were just  
13 referring to?

14 A. This is the affidavit of the process server  
15 indicating that the judgment debtor had moved from 102  
16 Reiman Street, floor two, and that the process server  
17 was unable to serve the subpoena duces tecum.

18 Q. So and the judgment was in May of '06?

19 A. I don't know when the judgment was entered. I  
20 have no reason to doubt that, but I don't know when it  
21 was entered.

22 Q. Let's just make sure we've got the right --  
23 yeah, May of '06. Okay, so May of '06 judgment is  
24 taken and now we're at July?

25 A. Again, I just want to clarify. I'm not saying

1 the judgment was entered in May of '06. I'll accept  
2 what you're saying for the purposes of this  
3 deposition. The judgment was entered I'm sure  
4 sometime before we obtained the file.

5 Q. I'm happy to show you, but if you want to, you  
6 know, if you're going to accept --

7 A. I don't know the relevance, but I'm saying I  
8 can't just simply accept what you're telling me. I  
9 will accept for the purposes of the deposition that it  
10 was May of '06 when the judgment was entered.

11 Q. And now we're at July of 2011, and has there  
12 been any monies collected on this account?

13 A. Again, I don't know what would have been  
14 collected prior to September 12, 2006.

15 Q. From September of -- so September of '06 to...

16 A. September 12th of 2006.

17 Q. To July of 2011, any monies collected on the  
18 account to date between that time period?

19 A. No.

20 Q. So it's fair to say you had a tough time  
21 locating this guy?

22 A. That is fair to say, correct.

23 Q. Is it defendant's position as we sit here today  
24 that my client, William J. Wagner, is the debtor?

25 A. I don't know, can't answer that.

1 Q. So you can't speak one way or another whether  
2 my client, Mr. Wagner, owes the debt to MJ Peterson  
3 that you're trying to collect?

4 A. As I've answered, I cannot answer whether the  
5 plaintiff is the judgment debtor in the action MJ  
6 Peterson, LLC versus William J. Wagner, Junior.

7 Q. Showing you a document that was previously  
8 marked as an exhibit in plaintiff's deposition?

9 A. It's Exhibit H.

10 MR. WOODARD: Exhibit H from the  
11 plaintiff's deposition, right, correct.

12 BY MR. ANDREWS:

13 Q. Yeah, have you ever seen that document before  
14 in preparation --

15 A. I probably have seen the document before, but I  
16 don't remember.

17 Q. You didn't review it in preparation for today's  
18 deposition?

19 A. I did not review this document in preparation  
20 for today's deposition.

21 Q. Is that a transcript of a judgment?

22 A. It appears to be a transcript of a judgment  
23 issued from the city court of Buffalo.

24 Q. And who is the judgment debtor?

25 A. The judgment debtor is William J. Wagner,

1 Junior.

2 Q. And what's the address?

3 A. 378 Windermere Boulevard, Amherst, New York  
4 14226.

5 Q. Thank you. So I'm going to ask you again, as  
6 we sit here today, my client, William J. Wagner, who  
7 never resided at 378 Windermere Boulevard, is he the  
8 judgment debtor?

9 MR. WOODARD: Form.

10 THE WITNESS: I don't know where your  
11 client resided, so my answer is going to be I don't  
12 know. It's the third time I've been asked.

13 MR. ANDREWS: Don't you think it's  
14 important to be able to identify who the proper debtor  
15 is?

16 MR. WOODARD: Form.

17 THE WITNESS: You're arguing.

18 MR. WOODARD: Form.

19 BY MR. ANDREWS:

20 Q. I'm just saying as a policy of Chiari & Ilecki,  
21 is it important to be able to identify?

22 A. Who the judgment debtor is?

23 Q. Yes.

24 A. Yes.

25 Q. And in this case, you can't make that



1 determination; is that correct?

2 MR. WOODARD: Form.

3 THE WITNESS: I don't have a policy of  
4 identifying people that sue me.

5 BY MR. ANDREWS:

6 Q. That's not what I asked.

7 A. Yes, it is what you asked.

8 Q. Your office was retained by MJ Peterson to  
9 collect a judgment against William J. Wagner, Junior;  
10 correct?

11 A. Goldstein, Bulan and Chiari was initially  
12 retained and then they merged into Bulan, Chiari,  
13 Horwitz and Ilecki.

14 Q. Your office is handling the account; correct?

15 A. Correct.

16 Q. And is it important to be able to identify the  
17 debtor and/or to satisfy that judgment?

18 A. Yes, I've already answered that.

19 Q. Okay. Is there a procedure in place for  
20 accounts with judgments to be able to collect on these  
21 accounts?

22 A. Yes.

23 Q. What's that procedure?

24 MR. WOODARD: Form.

25 THE WITNESS: The procedure -- the

1 question I think is so overbroad I can't answer it.

2 BY MR. ANDREWS:

3 Q. All right. We're going to go step by step. I  
4 come to you. I'm a client. I've got a judgment I  
5 want you to satisfy. What's the first step? I say  
6 Bill, I need your help satisfying this judgment.

7 A. The first step is to obtain information as to  
8 the court, obtain copies of the judgment, obtain  
9 identifying characteristics of the judgment debtor,  
10 work out a fee agreement, explain the terms of any  
11 reimbursement for disbursement, and I will tell you  
12 what you're asking involves quite a bit of detail. So  
13 I may forget some steps, but you also have to ensure  
14 that your client's legitimate, and if you work out  
15 those issues, then a search is done as to the judgment  
16 debtor.

17 Q. Okay. That's -- let's go from there.

18 A. And again, it was a relatively open-ended  
19 issue, but the search involves a review of whether it  
20 be Lexis or Westlaw, which has information as to  
21 addresses and some asset information. It may require  
22 also a review of other court documents or clerk's  
23 office documents. Usually, Westlaw or Lexis will give  
24 me clues as to additional searches that would have to  
25 be done. If I choose to take on the case and I tell

1 you send that to confirm the address of the debtor?

2 A. Primarily.

3 Q. Primarily to confirm --

4 A. Actually, I didn't state that because if I'm  
5 intending on serving a restraining notice I have to  
6 send a 5222 notice, so there are many reasons why I  
7 would send this letter. One of the reasons would be  
8 to confirm an address. If I have nothing else that  
9 I'm doing on the account, this letter would often go  
10 out to confirm an address.

11 Q. And if it doesn't come back as undelivered,  
12 then Chiari & Ilecki's policy is that's a good  
13 address?

14 MR. WOODARD: Form.

15 THE WITNESS: I wouldn't say it's Chiari  
16 and Ilecki's policy that it's a good address. Based  
17 on the Lexis search or credit report search, we  
18 probably have a good reason to believe it's a good  
19 address, and I would say in most cases I would believe  
20 it's a good address, but I won't always be certain  
21 it's a good address. I'd have to look at each file.  
22 If you're asking generally, I could say generally I  
23 would presume it's a good address, but not always.

24 BY MR. ANDREWS:

25 Q. Looking at that document, the February 2, 2015

1 letter, it's addressed to William J. Wagner, Junior;  
2 correct?

3 A. Just to clarify, I'm showing February 9th.

4 Q. I'm sorry, February 9th. Thank you.

5 A. So if you're asking me if the February 9, 2015  
6 letter, Chiari 0 or Chiari 1, a letter addressed  
7 William J. Wagner, Junior, 5419 Roberts Road, Hamburg,  
8 New York 14075.

9 Q. Does a William J. Wagner, Junior live at that  
10 address?

11 A. I don't know if William J. Wagner, Junior lives  
12 at that address.

13 Q. So you sent a letter with a restraining notice  
14 to a William J. Wagner, Junior that you don't know if  
15 he lives at that address; is that correct?

16 MR. WOODARD: Object to form.

17 THE WITNESS: First of all, I didn't send  
18 a letter with a restraining notice.

19 BY MR. ANDREWS:

20 Q. Did a restraining notice go out that day?

21 A. I don't know. I'm looking at a letter.  
22 There's no restraining notice with this letter.

23 Q. Well, let's look back to Chiari 165, and we  
24 look at the event date of 2/9/2015?

25 A. Okay.

1 Q. And there's a letter to debtor and information  
2 subpoena to debtor?

3 A. Correct.

4 Q. So you did send out an information subpoena on  
5 February 9, 2015?

6 A. First of all, I didn't send out an information  
7 subpoena on February 9, 2015. Our records reflect the  
8 fact that an information subpoena was prepared on  
9 February 9, 2015.

10 Q. So it was prepared, but not sent?

11 A. I'm not saying it wasn't sent. I'm saying I  
12 didn't do that.

13 Q. I'm not -- you're not testifying as to Bill  
14 Ilecki. I'm saying the firm, right, as the 30(b)(6)  
15 witness did -- did --

16 A. Well, I can testify as a thirty -- listen, I'm  
17 testifying still on my own personal knowledge. I'm  
18 reading the same thing you're reading. An information  
19 subpoena was prepared by Melissa Overbeck. I believe  
20 she would have signed the information subpoena  
21 immediately after preparing and provide that document  
22 to a legal assistant to mail. There's documentary  
23 proof of the mailing.

24 Q. So it was sent out then?

25 A. I believe it was sent out, correct.

1 also -- she can testify to that, but she had told me  
2 she also checked at some point Real Info, which  
3 basically is a program that can find real property  
4 assessment information. Melissa would have done the  
5 review to determine whether we had a good address for  
6 the judgment debtor. She would have done that review  
7 on June 5, 2015.

8 BY MR. ANDREWS:

9 Q. And that review indicates that LX, that stands  
10 for Lexis?

11 A. I -- yeah, I believe she -- that would have  
12 been her initial for Lexis.

13 Q. It says -- looks like WW, comma, SR, period, so  
14 I assume that's William Wagner, Senior, and WW, comma,  
15 JR, period, William Wagner, Junior, live at same  
16 address. Advised action to be sure to serve correct  
17 DBTR, debtor?

18 A. Yeah, that is the notation.

19 Q. So what report did she rely on? Did you  
20 produce that reference report that she relied on?

21 A. I don't know if that Lexis report was produced.  
22 I doubt we could have produced a report from June 5,  
23 2015. We don't print or save the reports. You may  
24 have a report that would have had a date after June 5,  
25 2015. I do not know if it was produced.

1 Q. Is that the report you're referring to?

2 A. I have a report, Chiari 182. It's a report  
3 from Lexis dated December 31, 2015.

4 MR. WOODARD: Chiari 182 to 191.

5 THE WITNESS: Oh, I'm sorry.

6 BY MR. ANDREWS:

7 Q. So you have this report. You obviously printed  
8 this. It's not your procedure to print reports that  
9 you used to determine the address of someone you're  
10 going to serve a debtor exam on?

11 A. We do not print. It is my policy not to print  
12 the Lexis reports.

13 Q. But you printed this one?

14 A. Generally.

15 Q. You printed this one. So why did you print  
16 this one, the December 31st, and you didn't print the  
17 one that Melissa...

18 A. I think you -- this was printed in -- either in  
19 response to your disclosure request or in anticipation  
20 of litigation.

21 Q. Going back to your prior testimony, when you  
22 said there's a procedure in place to work accounts  
23 that have judgment, is one of the actions undertaken  
24 by the firm to send a subpoena duces tecum?

25 A. That is one of the enforcement mechanisms that

1 we employ when appropriate.

2 Q. And you send that to a debtor; correct?

3 A. A subpoena duces tecum can be sent to my  
4 debtor. In my office, it's usually sent to a debtor.  
5 It can be usually sent to non-debtors as well.

6 Q. Non-debtors that --

7 A. Non-judgment debtors.

8 Q. In what regard would you send a subpoena duces  
9 tecum to a non-debtor?

10 MR. WOODARD: Form, go ahead.

11 THE WITNESS: Well, again, there's an  
12 exhaustive list of cases, but probably the most common  
13 circumstance when you might send a subpoena duces  
14 tecum to a non-debtor is if you have an employer  
15 that's not cooperating with an income execution that  
16 you feel the person is employed and you want to get  
17 some documentation as to payment history or some  
18 information as to why they're not complying with an  
19 income execution. We used to send sometimes  
20 information to a bank if you needed to see bank  
21 records. Mostly when you need to see documentation is  
22 when it's really valuable as to non-debtors.

23 BY MR. ANDREWS:

24 Q. So fair to say you've sent it to a third-party  
25 when they have some connection to the debtor, usually



1 a financial connection?

2 A. You have to, that's the law. There has to be a  
3 reason why you're sending a subpoena to a third-party.  
4 You have to have a good faith belief that a  
5 third-party has information.

6 Q. Just so we're clear, if you're not sending it  
7 to the debtor, the third-party has to have some kind  
8 of connection to that debtor?

9 A. You have to have a reasonable belief that there  
10 is a reason why the third-party might have information  
11 or documentation.

12 (Whereupon, Exhibit Plaintiff's C, a Real  
13 Info print-out, was marked for identification.)

14 BY MR. ANDREWS:

15 Q. So you've got a document that's been marked as  
16 Plaintiff's Exhibit C, and it's based stamped Chiari  
17 192?

18 A. Okay.

19 Q. And it's -- the top it says real-info.com. Is  
20 this the -- is this a copy of a snapshot of a website  
21 that your firm utilizes to identify addresses of  
22 debtors?

23 A. Among other things, yes.

24 Q. And you testified that Melissa used this Real  
25 I'll refer to it as in order to identify the debtor's

1 address as 5419 Roberts Road; is that right?

2 A. I think I testified that I believe Melissa did  
3 run a Real Info or Real record search.

4 Q. Is this the search to the best of your  
5 knowledge that she ran?

6 A. It wouldn't have been the search because the  
7 date of this document is May 9, 2016, but just to make  
8 things easy, the results probably would have been the  
9 same. You know what, I have to -- actually, I have to  
10 take that back because I see there's a sale date,  
11 4/23/15, so that sale may not have appeared on the  
12 date that Melissa may have run her Real Info search.  
13 Generally, the information would be the same; however,  
14 in terms of the property description, the tax  
15 information would have a different tax year that might  
16 have a different assessed value.

17 Q. The ownership would be the same, assuming it's  
18 a refi; is that right?

19 A. In this case, because of the fact it was a very  
20 recent sale, I'm not sure that the 2015 transfer --  
21 you can see there was a transfer in 2015. I'm not  
22 sure that would have shown up on the search run by  
23 Melissa.

24 Q. And this particular document doesn't reference  
25 William J. Wagner, Junior at 5419 Roberts Road;

1 correct?

2 A. Well, it references -- it speaks for itself.  
3 It references a William Wagner at 5419 Roberts Road,  
4 Hamburg, New York 14075.

5 Q. But the debtor is William J. Wagner, Junior.  
6 It's a different name; correct?

7 MR. WOODARD: Form.

8 THE WITNESS: No, it's not.

9 MR. ANDREWS: William Wagner and William  
10 J. Wagner, Junior are not different names?

11 MR. WOODARD: Form.

12 THE WITNESS: They can be -- listen, they  
13 can be the same name. My name is William Ilecki.  
14 It's also William J. Ilecki. It's the same name. I  
15 mean, I answer to both. If you're arguing that  
16 William Wagner is identical in every respect to  
17 William J. Wagner, Junior, of course not. A J and a  
18 junior are missing.

19 BY MR. ANDREWS:

20 Q. I am going to show you a document that was  
21 produced in response to plaintiff's discovery demands.  
22 It's labeled Chiari 180 to 181. It's a Trans Union  
23 report. Have you ever seen this particular report  
24 before today?

25 A. I probably have seen the report. I don't

1 Q. Is there a procedure for when a person provides  
2 identifiers, in this case some other social security  
3 number, as well as their date of birth, with respect  
4 to verifying if that's the debtor?

5 A. Yes.

6 Q. What's that procedure?

7 A. Well, again, it's a very broad statement, but  
8 the procedure involves an attorney receiving  
9 notification and the attorney having to review whether  
10 it be a credit report, a public record search, some of  
11 the other search tools we have such as Real Info,  
12 Lexis or Westlaw in making a determination whether we  
13 need additional information or whether the information  
14 provided by the person making the telephone call was  
15 correct or not correct.

16 Q. Is this policy in writing anywhere?

17 A. No.

18 Q. Was it a mistake to have the subpoena duces  
19 tecum served on the Roberts Road address?

20 MR. WOODARD: Form.

21 THE WITNESS: I don't know.

22 BY MR. ANDREWS:

23 Q. You don't know if it was a mistake?

24 A. No, I don't know.

25 Q. Was that subpoena sent to that process server

1 with the intention to have the person residing at the  
2 Roberts Road address served?

3 MR. WOODARD: Object to form.

4 THE WITNESS: Again, again, yeah, I mean,  
5 your -- the form of your question is wrong. I can  
6 answer, and then if you want to follow-up with a  
7 question, I'll provide you with testimony. It was the  
8 intention of the firm, as I testified, to serve the  
9 judgment debtor at the address provided in the --  
10 provided to the process server as long as the judgment  
11 debtor resided, worked or -- at that address or that  
12 address was the usual place of abode or dwelling  
13 place.

14 MR. ANDREWS: Did you make any error or  
15 mistake at any point during your contacts with my  
16 client, Mr. Wagner, with respect to attempting to  
17 collect the judgment in favor of MJ Peterson, Inc.?

18 MR. WOODARD: Object to form.

19 THE WITNESS: Again, in terms of the  
20 contacts that were made with your client, could you  
21 please -- could you please specify which  
22 communications you're referencing?

23 MR. ANDREWS: The February 9th letter.

24 MR. WOODARD: Object to form.

25 THE WITNESS: Okay. Here's -- okay, and I

1 understand the objection to form. We didn't send the  
2 February 9th letter to anyone other than the judgment  
3 debtor.

4 BY MR. ANDREWS:

5 Q. You sent it to William J. Wagner, Junior at  
6 5419 Roberts Road, Hamburg, New York 14075; correct?

7 A. Correct.

8 Q. Who resides at 5419 Roberts Road, Hamburg, New  
9 York 14075?

10 MR. WOODARD: Form.

11 THE WITNESS: I don't know.

12 MR. ANDREWS: So it's possible you're  
13 sending a collection letter to someone that's not the  
14 debtor?

15 MR. WOODARD: Form.

16 THE WITNESS: No, that's not possible.

17 BY MR. ANDREWS:

18 Q. That's not possible?

19 A. No. In this case, no.

20 Q. So you alleged as an affirmative defense bona  
21 fide error; correct?

22 A. In the answer, there is an affirmative defense  
23 of bona fide error.

24 Q. What's the error?

25 A. The error is as alleged by the plaintiff. To

1 the extent the plaintiff is correct in the plaintiff's  
2 allegation that there was a violation of the Fair Debt  
3 Collection Practices Act, we have a bona fide error  
4 defense as to that violation.

5 Q. What is the error?

6 A. I don't think there's an error right now. I  
7 haven't made the determination if there is an error  
8 and I'm not the judge.

9 Q. Is it defendant's position that William J.  
10 Wagner, Junior, if he's not the debtor, by serving  
11 that person with a debtor exam, is that an attempt to  
12 collect a debt?

13 MR. WOODARD: Object to form.

14 THE WITNESS: In this one I've just lost  
15 the question, and if you could repeat it?

16 BY MR. ANDREWS:

17 Q. Sure, I'll try to clean it up a little bit.

18 Is it defendant's position that service of a  
19 subpoena duces tecum, a debtor exam, is an attempt to  
20 collect a debt?

21 A. I would agree that if you're talking about  
22 service of a subpoena in a -- in a post-judgment  
23 enforcement proceeding.

24 Q. Correct.

25 A. That would be an attempt to collect a debt.

1 Q. And that subpoena was served on William J.  
2 Wagner; correct?

3 MR. WOODARD: Form.

4 THE WITNESS: I don't know. I don't know.  
5 BY MR. ANDREWS:

6 Q. If we look at Chiari 166, on 6/24/2015 of the  
7 event log, action, dash, dash, AOS, dash, dash, ST --  
8 SDT, dash, dash, personal service, and that stands for  
9 affidavit of service, subpoena duces tecum, personal  
10 service, is that --

11 A. I would agree that that would be the reference  
12 in the abbreviation.

13 Q. So I'm going to ask you again, was William J.  
14 Wagner served with a subpoena duces tecum?

15 MR. WOODARD: Form.

16 THE WITNESS: I don't know.

17 BY MR. ANDREWS:

18 Q. When you read that, what does that indicate to  
19 you, someone was served?

20 A. What this entry indicates to me is that there  
21 was personal service of the subpoena duces tecum.

22 Q. And where was -- do you know the address to  
23 which that service was affected?

24 A. I don't have the document in front of me, but  
25 the affidavit would speak for itself as to the



1 address.

2 Q. Okay, fair enough. Do you have the burden as  
3 the debt collector, the attorney, to identify the  
4 correct debtor or is the burden on the individual that  
5 you're attempting to contact to identify themselves as  
6 the debtor?

7 MR. WOODARD: Form.

8 THE WITNESS: Burden in what respect? I  
9 mean, burden is a term of art.

10 MR. ANDREWS: Burden not from a legal  
11 standpoint, burden as it's your job in order to  
12 satisfy the judgment to the best of your firm's  
13 ability for your client?

14 MR. WOODARD: Form.

15 THE WITNESS: It's my job to attempt to  
16 satisfy the judgment as legally permissible to the  
17 best of my -- well, using reasonable means.

18 BY MR. ANDREWS:

19 Q. Does a person that you contact with respect to  
20 attempting to collect the judgment have any obligation  
21 or duty to provide you with information that you can  
22 ascertain their identity?

23 A. Yes.

24 Q. A non-debtor, a non-debtor has a duty to you?

25 MR. WOODARD: Form.

1 THE WITNESS: I don't think you asked  
2 that.

3 BY MR. ANDREWS:

4 Q. I'll clarify it as a non-debtor.

5 A. A non-debtor can be required to provide  
6 information to me by way -- absolutely, a non-debtor  
7 can in some circumstances be required to provide  
8 information to me.

9 Q. So hypothetically speaking, my client, Mr.  
10 Wagner, is not the debtor?

11 A. Hypothetically speaking.

12 Q. Hypothetically speaking, is he required then to  
13 provide you information verifying that he is not the  
14 debtor?

15 MR. WOODARD: Form.

16 THE WITNESS: If I subpoena your client,  
17 that would be a requirement under the law.

18 BY MR. ANDREWS:

19 Q. What about a phone call, is he required to give  
20 you --

21 A. There is no legal requirement for a non-debtor  
22 to provide information identifying themselves as a  
23 non-debtor during a telephone call with a  
24 non-governmental agent. You're talking about a legal  
25 requirement and I want to stress that.

1       Q. I just want to know if it's Chiari & Ilecki's  
2 position as a policy, as a firm, that when they reach  
3 out to consumers, to individuals that they believe is  
4 a debtor, but they're not sure of, which is clearly in  
5 this case based on your testimony --

6       A. No, it's not my testimony.

7               MR. WOODARD: Object to form.

8               THE WITNESS: Absolutely, so ask it  
9 differently. I'm not going to answer that question.

10              MR. ANDREWS: Is my client the debtor?

11              MR. WOODARD: Object to form.

12              THE WITNESS: I don't know.

13 BY MR. ANDREWS:

14       Q. So you can't say today whether he's the debtor?

15       A. I cannot.

16       Q. So my question is this. In this instance, you  
17 don't know whether or not the person you've reached  
18 out to via a letter, an attempted information subpoena  
19 and a personal service of a debtor exam is the debtor;  
20 correct?

21              MR. WOODARD: Form, object to form.

22              THE WITNESS: Actually, see, again, I've  
23 already answered that, and really, I'm not trying to  
24 be difficult. You're missing the point. We did reach  
25 out to the debtor, to the judgment debtor. Every

1 action we've taken is against the judgment debtor.  
2 Whether the judgment debtor is your client, I can't  
3 answer that. That's the difference. What's with the  
4 smirks, Seth?

5 BY MR. ANDREWS:

6 Q. Because it's -- you can't have it both ways,  
7 Bill. You can't have it both ways.

8 A. You actually can.

9 Q. I don't want to get into another argument  
10 because it's not appropriate for this.

11 If a person fails to respond to a subpoena, is  
12 it common for your office to proceed with an  
13 enforcement motion?

14 A. Yes.

15 Q. And your office has --

16 A. Properly served subpoena.

17 Q. Yes, and your office has filed such motions in  
18 the past?

19 A. When appropriate, we have filed motions to  
20 enforce a subpoena.

21 Q. In fact, is it in your written procedures to do  
22 such?

23 MR. WOODARD: Form.

24 THE WITNESS: It's not in my written -- if  
25 you're talking about -- actually, I have to clarify.

## ERRATA SHEET

PAGE LINE

8 19

change: "CHASE" FOR CASE

reason: TYPO

8 20

change: "NOR" FOR OR

reason: TYPO

12 4

change: "REINGOLD" FOR "RYAN GOLD"

reason: TYPO

20 25

change: "2006" FOR 2016 - 2 PLACES

reason: TYPO

25 23,24

change: DELETE PERIOD AFTER ADDRESS

reason: REMAINDER UNINTELLIGIBLE

34 18

change: "POSTAL SERVICE" FOR "POST"

reason: TYPO

change: \_\_\_\_\_

reason: \_\_\_\_\_

change: \_\_\_\_\_

reason: \_\_\_\_\_

change: \_\_\_\_\_

reason: \_\_\_\_\_

I WILLIAM ILECKI hereby certify  
 that I did review and if necessary correct this  
 deposition and that the foregoing pages 1 through  
77 are a true and accurate recording of said  
 proceedings.

PER ERRATA CHANGES - WLI

Subscribed and sworn to before me this  
15th day of January, 2017.

Melissa Lynn Overbeck  
 Notary Public

MELISSA LYNN OVERBECK  
 Notary Public - State of New York  
 Qualified in Erie County  
 No. 02OV6266364  
 Commission Expires July 23, 2020

METSCHL & ASSOCIATES  
 Buffalo: 716-856-1906 Rochester: 585-697-0969